82-5

NEWARK PUBLIC LIBRARY

OCT 22 1982

U. S. GOVT. PUBS.
DEPOSITORY 376

Administering the Federal Judicial Circuits: A Survey of Chief Judges' Approaches and Procedures

Federal Judicial Center

Ju 13.10:

THE FEDERAL JUDICIAL CENTER

Board

The Chief Justice of the United States
Chairman

Judge John D. Butzner, Jr.
United States Court of Appeals for the Fourth Circuit

Chief Judge Warren K. Urbom
United States District Court District of Nebraska

Judge Cornelia G. Kennedy
United States Court of Appeals for the Sixth Circuit

Judge Donald S. Voorhees
United States District Court Western District of Washington

Chief Judge William S. Sessions
United States District Court Western District of Texas

Judge Lloyd D. George
United States Bankruptcy Court District of Nevada

William E. Foley
Director of the Administrative Office of the United States Courts

---

Director

A. Leo Levin

Deputy Director

Charles W. Nihan

Division Directors

Kenneth C. Crawford
Continuing Education and Training

William B. Eldridge
Research

Gordon Bermant
Innovations and Systems Development

Alice L. O'Donnell
Inter-Judicial Affairs and Information Services

Assistant Director

Russell R. Wheeler

1520 H Street, N.W.
Washington, D.C. 20005
Telephone 202/633-6011

ADMINISTERING THE FEDERAL JUDICIAL CIRCUITS: A SURVEY OF CHIEF JUDGES' APPROACHES AND PROCEDURES

By Russell R. Wheeler and Charles W. Nihan

Federal Judicial Center
August 1982

This publication is a product of a study undertaken in furtherance of the Center's statutory mission to conduct and stimulate research and development on matters of judicial administration. The analyses, conclusions, and points of view are those of the authors. This work has been subjected to staff review within the Center, and publication signifies that it is regarded as responsible and valuable. It should be emphasized, however, that on matters of policy the Center speaks only through its Board.

Cite as R. Wheeler & C. Nihan, Administering the Federal Judicial Circuits: A Survey of Chief Judges' Approaches and Procedures (Federal Judicial Center 1982).

FJC-R-82-5

TABLE OF CONTENTS

I. INTRODUCTION 1

Origin and Purpose of the Study 1
Method 2

II. FIVE OVERALL IMPRESSIONS OF ADMINISTRATION BY CHIEF JUDGES IN THE APPELLATE COURTS 5

Administration Is a Significant Burden on Chief Judges 5
Chief Judges Tend to Understate the Importance of Their Administrative Responsibilities 7
Chief Judges Differ Less in Their Specific Administrative Procedures than in Their Overall Approach to Administration 7
Circuits Are in Transition to a New Administrative Era 9
Current Conditions May Require a Change in Administrative Approach 9

III. HOW CHIEF JUDGES FULFILL THEIR ADMINISTRATIVE RESPONSIBILITIES IN THE APPELLATE COURTS 13

Judicial Organizations 13
- Judicial Councils and Courts of Appeals 14
- Circuit Judicial Conferences 18
- Periodic Meetings with Chief District Judges 20
- Educational Programs 20
- Judicial Conference of the United States 21

Relationships with Judges 23
- General Problem Solving 23
- Dealing with Allegations of Judicial Unfitness and Misconduct 25

Case-Flow Management in the Court of Appeals 26
- Designation of Calendars and Panels and Opinion Assignment 27
- Recruiting Visiting Judges 28
- Clearing Backlogs 29
- Planning Innovations in Case-Flow Management 29

Supervising District Court Business 30
- Dealing with Backlogs 30
- Interdistrict Assignments 31
- Approval of Criminal Justice Act Vouchers 32
- Bankruptcy Reappointments 34

General Planning 35
General Administration 35
- Budgeting 36
- Personnel 37
- Equipment and Supplies Acquisition 37

Space and Security 38
External Relations 39

IV. CHIEF JUDGES' ASSESSMENT OF THEIR ADMINISTRATIVE ROLES 41

V. HOW THE ADMINISTRATIVE COMPONENT OF THE CHIEF JUDGE'S ROLE MIGHT BE STRENGTHENED 45

Preparation and Orientation in Chief Judges' Responsibilities 45
Recognition of the Importance of Administration 47
Review of Chief Judges' Statutory Duties 48

Appendix A: Project Description Sent to Potential Interviewees 51

Appendix B: Tenure of Chief Circuit Judges Serving Since 1959 55

LIST OF TABLES

1. Chief Judges' Caseload Reductions as of February 1982 6

2. Chief Judges' Approaches to Administration 8

3. Chief Judges' Collective Perception of the Relative Importance of Their Administrative Duties 42

READEX FICHE best copy available

I. INTRODUCTION

Origin and Purpose of the Study

This report, which describes how the chief judges of the federal appellate courts discharge their administrative responsibilities, was written at the request of the Conference of Chief Judges.[1] The conference had decided at its October 1980 meeting to distribute a questionnaire on this subject to each of its members to enable them to learn more about how their colleagues approach administrative tasks. Subsequently, however, the then-chairman of the conference, Chief Judge James R. Browning of the Ninth Circuit Court of Appeals, indicated to the conference that he thought a field survey would be more useful than a questionnaire. His recommendation was prompted in part by a somewhat similar survey conducted by the Federal Judicial Center to determine how large federal district courts meet their administrative responsibilities.[2]

Consequently, Chief Judge Browning asked the Center if it would be willing to undertake what he characterized as a "field study of the manner in which administrative responsibility is discharged by the chief judge in each of the circuits and national courts." He thought "an analysis based on direct interviews . . . will be more valuable than personal responses to a questionnaire by thirteen chief judges which they may interpret differently and answer on widely varying levels of specificity."[3]

Because the purpose of this study was to enable members of the conference to learn how their colleagues discharge their administrative tasks, the report is primarily descriptive rather than prescriptive. Chapter four, however, contains an analysis of the prior-

1. At the time the report was requested by the Conference of Chief Judges, the conference was composed of the chief judges of the federal circuit courts, the Court of Claims, and the Court of Customs and Patent Appeals. The research was substantially completed prior to October 1, 1981, when the Eleventh Circuit was formed pursuant to the Fifth Circuit Reorganization Act of 1980, Pub. L. No. 96-452, 94 Stat. 1994.

2. The results of the survey have since been published in P. Dubois, Administrative Structures in Large District Courts (Federal Judicial Center 1981).

3. Memorandum from Chief Judge James R. Browning to chief judges of the circuit courts (Dec. 8, 1980) (on file at the Federal Judicial Center).

ities that seem to govern the chief judges' personal involvement in the numerous administrative tasks for which they may have responsibility. Chapter five discusses steps that might help new chief judges become familiar with their role and suggests some general policies and operating assumptions that might ease some of the difficulties chief judges face.

Method

In preparing this report, we initially compiled a list of all the duties assigned by statute to chief judges and supplemented it with other administrative duties that one might reasonably expect to find performed in an appellate court.[4] In this report, *administrative activity* refers to all aspects of the work of the court (except actual case deciding) and the judicial council. It includes, for example, maintaining relations with the bar and the public, dealing with the sensitive problems of alleged judicial unfitness, and planning improvements in, as well as monitoring the status of, caseflow management in the circuit and district courts. It also includes the array of more conventional administrative duties involving a court's personnel, budget, equipment acquisition, and other such matters.

Most of the data for the report came from interviews with chief judges and others aimed at discovering how administrative responsibilities were met in a particular court. Prior to each interview, we sent a description of the project, including a list of possible administrative duties, to the potential interviewees. This document is reproduced in appendix A.[5] The main part of each interview was spent reviewing the administrative duties listed in the project description. We also sought such information as estimates of the amount of time the chief judges devoted to administration, and we tried to get a sense of the chief judges' basic approaches to administration. We pursued these questions with each chief judge as well as with those who worked with him in order to gain a variety of perspectives on the particular chief judge's method of operation. The interviews were loosely structured and open-ended to allow

4. We borrowed from the general approach and specific duties discussed in Dubois, *supra* note 2, at 6-12.

5. A slightly abbreviated document was provided to interviewees in the two national courts, omitting such inapplicable duties as those associated with the bankruptcy act transition. We have not included the chief judges of the two national appellate courts in the quantified comparisons in this report because, as both were quick to point out, their responsibilities differ significantly from those of chief circuit judges. However, we have drawn on both interviews in our narrative.

treatment of other questions that arose in the course of the discussions. We also sought various documents from the courts, such as sample judicial council agendas, standard internal operating procedures, specific directives, and lists of committees. Once this information was amassed, we used follow-up telephone calls to verify information and to obtain additional information as required.

We interviewed every chief judge and every circuit executive. In some circuits we interviewed other judges, including four former chief judges, usually at the suggestion of the chief judge.[6] In all but two circuits, we interviewed the clerk of court; in some circuits, we spoke to the senior staff attorney and to others such as the librarian and members of the chief judge's staff. Precisely whom we interviewed beyond the chief judge and the circuit executive was determined in part by the constraints of geography and time. The shortest interview with a chief judge lasted forty-five minutes and the longest interview lasted more than three hours; the average interview was slightly less than two hours. Interviews with the circuit executives and clerks of court averaged approximately one hour and twenty minutes, as did interviews with other judges. In September 1981, we sent a draft of this report to all the chief judges (current and former) we interviewed as well as to all circuit executives. We also presented the report orally to the Conference of Chief Judges, attended by the circuit executives, at their September 1981 meeting, which resulted in several emendations to the report.

Several characteristics of our interview data should be mentioned. We interviewed several chief judges who had held office for a comparatively brief period of time.[7] The practices and perspectives—collective and individual—reported in this survey may change as these chief judges serve longer. There are other ways in which our information reflects the current state of transition of the circuits and their leadership. First, between the time of our research and the publication of this report, the Fifth Circuit was split, creating two large circuits where there had been one enormous circuit. Second, in the late 1970s, most circuit councils adopted rules providing for district judge participation and specifying procedures for handling complaints of judicial misconduct. At the

6. Three courts were in transition from one chief judge to another. In one of the courts, we spoke to a chief judge who had been in office about a week as well as to his predecessor, and in the other two courts, we spoke to the chief judges who were soon to assume office as well as to the current chief judges. The data for the former court come mainly from the preceding chief judge, and the data for the latter courts come mainly from the chief judges who were then in office.

7. At the time we interviewed them, three of the eleven chief judges had served for less than a year and two others had served for less than a year and a half.

time of our interviews, the circuits were preparing to implement the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980,[8] which took effect October 1, 1981, mandating procedures for district judges' council membership and for handling judicial misconduct complaints. The procedures required by statute were similar to those that most councils had already adopted. Third, several circuits are or were reorganizing the membership and activities of their annual circuit judicial conferences.

Finally, this report hardly has the precision that would be provided by data resulting from a desk audit, but it enjoys the advantage of not having subjected individuals to that obtrusive and time-consuming process. Those we interviewed—chief judges and others—sometimes found it difficult to describe the full scope and detail of their administrative tasks and to quantify the amount of time and energy that they give to various administrative tasks. The quantifications they provided, therefore, were not always consistent with their more general descriptions.

8. Pub. L. No. 96-458, 94 Stat. 2035.

II. FIVE OVERALL IMPRESSIONS OF ADMINISTRATION BY CHIEF JUDGES IN THE APPELLATE COURTS

Administration Is a Significant Burden on Chief Judges

Administrative duties impose a very significant burden in time and energy upon appellate chief judges. The amount of time the chief judges estimated they devoted to administration ranged from 20 percent to 80 percent of their overall working time. They pointed out that these estimated percentages could well fluctuate on a daily basis. As one might expect, chief judges in the larger circuits gave the highest estimates and those in the smaller circuits gave the lowest estimates. The average of their estimates is 45 percent.[9]

Yet chief judges may not realize the full extent of their administrative burden. One took occasion to itemize in percentages the time he devoted to the various tasks listed in the document in appendix A. His letter describing this itemizing process merits quoting.

> The net result of this appears to be that a clear majority of my time is spent on duties imposed by the Chief Judgeship, with only 46% left for normal active appellate judge court work. Agreeing that these estimates are necessarily subjective and imprecise, I must say that I was a bit shocked with the outcome. I pass this on for whatever it is worth.

Furthermore, the nature of chief circuit judges' administrative duties is such that the burden they impose is greater than would be indicated by the simple estimate of time devoted to those duties. Most chief judges deal with administrative matters as they come to their desks throughout the day, which makes it difficult for them to focus on their judicial work or even on some aspects of their administrative work. One circuit executive, in describing the work of the chief judge, referred to "so many interruptions." That chief judge volunteered later that a 20 percent reduction in his caseload would not mean that he would spend only 20 percent of his day on

9. Special circumstances, such as a vacancy in the circuit executive's office, may mean that some of these estimates were atypical of normal operating conditions.

administration. Rather, he devotes about half his office day to administration, which forces him, to a much greater extent than before he became chief judge, to deal with judicial matters in the evenings or on weekends.

Despite the press of their administrative duties, almost half the chief judges take no caseload reduction, and most of the others take only a slight reduction. Table 1 shows the caseload reductions of chief circuit judges as of February 1982.

TABLE 1
Chief Judges' Caseload Reductions as of February 1982

Circuit	Filings in Stat. Year 1981[1]	Number of Circuit Judgeships[2]	Number of District Courts[3]	Number of District Judgeships[3]	Caseload Reduction
D.C.	1,604	11	1	15	None
First	902	4	5	23	None
Second	3,061	11	6	50	20% reduction in sittings
Third	2,013	10	6	48	1 or 2 fewer sittings per term (normal for judges is 8)
Fourth	2,247	10	9	44	Reduced screening
Fifth[1]	1,852	14	9	57	Reduction in screening when possible; depends on number of active judges
Sixth	2,376	11	9	51	No motions panels
Seventh	2,038	9	7	36	None
Eighth	1,368	9	10	35	Reduced participation in administrative panels[4]
Ninth	4,262	23	15	73	33% reduction in sittings
Tenth	1,577	8	8	27	None
Eleventh[1]	1,711	12	9	52	Fewer sittings per term

NOTE: This table is modeled after a table prepared in 1980 for the Conference of Chief Judges by Center Research Director William B. Eldridge.

[1] Administrative Office of the United States Courts, 1981 Annual Report of the Director (preliminary ed.) at table B3.

[2] 28 U.S.C. § 44 (1980).

[3] 28 U.S.C. § 133 (1980).

[4] Administrative panels dispose of presubmission matters requiring judicial action.

Whether a chief judge takes a caseload reduction and how much of a reduction he takes seem to be based primarily on personal preference rather than on work pressure or established court policy. In reviewing the information in table 1, we noticed only a slight association at best between the chief judges' caseload reductions and their estimates of the percentage of time they devote to administration. The situation we found in the appellate courts is thus different from what Dubois found in large district courts,

where, he reports, the highest estimates of time devoted to administration "generally were made by the judges who received the most relief from regular caseload assignments."[10]

Chief judges who take no reduction do not appear to oppose the principle of the idea; they are just reluctant to apply the principle to themselves. Indeed, one hoped he could leave the standard of a reduced caseload "as a legacy to his successor." Others noted, without apparent disapproval, that the court had voted a procedure to allow them a reduction, or had urged them to take one, although they had not availed themselves of this opportunity. Those chief judges who take no reduced caseload seem to think that to do so would constitute a failure to fulfill their main responsibilities as judges. One chief judge with a heavy administrative burden said, for example, that although he might take a reduced caseload in the future, he did not think it appropriate to do so while the court was involved in a "manful effort" to eliminate its backlog. In another circuit, the chief judge takes no significant caseload reduction, but reported that he had reached a fairly explicit agreement to forgo his slight reduction if the other judges of the court would agree to assume some administrative tasks on delegation.

Chief Judges Tend to Understate the Importance of Their Administrative Responsibilities

Chief judges are generally reluctant to acknowledge the importance of their administrative responsibilities. They apparently are reluctant because such responsibilities are not an exercise of the law-declaring function for which they were appointed to the court of appeals. What a former chief judge said of his circuit has general applicability: "[I]n [this] circuit, the feeling is that judges were appointed to be judges first and not administrators, and this influences the work of the chief judge." An incumbent chief judge said he "wanted to be a judge rather than an administrator." Both of these chief judges, it should be noted, approached their administrative responsibilities with diligence, and their tenures are marked by significant administrative accomplishment.

Chief Judges Differ Less in Their Specific Administrative Procedures than in Their Overall Approach to Administration

We have not uncovered a thick catalog of alternative administrative procedures from which chief judges might pick and choose new ways to meet the duties of their office. Many of the chief judges perform their specific administrative duties in a highly similar

10. Dubois, *supra* note 2, at 14-15.

fashion. There are, to be sure, variations in procedures—most of them modest—and we have highlighted these throughout the report.

The greater variation in how chief judges confront their administrative duties is in their general approach to the job. The "chief judge as administrator" can be described on the two distinct and obvious dimensions—activism and delegation—displayed in table 2. We use the term *activist* to describe chief judges who find that their administrative responsibilities are best carried out when they try to anticipate problems and take steps to control them before they arise. Other chief judges are *nonactivist;* they find it best to let situations develop and to deal with problems only once they take definite form. Similarly, some chief judges rely on what we call "heavy delegation," referring as much administrative work as possible to other judges, committees of judges, or court officers. Others think that the personal attention of the chief judge will, in the long run, result in the most effective administration. (Of course, there are other dimensions of administration, but these two seem most apt for the present discussion.)

TABLE 2
Chief Judges' Approaches to Administration

Dimension	Heavy Delegation	Little Delegation	Total
Activist	5	1	6
Nonactivist	1	4	5
Total	6	5	11

Table 2 reveals our best judgment of how the chief judges are aligned on the two dimensions. The actual administrative patterns of each chief judge are more complex than is suggested by these discrete categorizations; the patterns in the table, however, offer an insight into administrative styles that is consistent with intuition.[11] There is a relatively even split, six to five, on both major dimensions. Moreover, as might be expected, there is an association between the tendency to be activist and the tendency to delegate and between the tendency to be nonactivist and the tendency to attend to detail. Chapter four provides a more detailed picture of how the chief judges collectively perceive their specific administrative functions.

11. We intend no inference that any particular alignment on these dimensions is associated with administrative effectiveness.

Circuits Are in Transition to a New Administrative Era

Courts of appeals are in transition from one era to another. The number of circuits has increased, one circuit is experimenting (and one had experimented) with administrative divisions,[12] and both the circuit and the district courts have grown larger. Interest in case management innovations is growing. Many circuits are reevaluating the purpose of the circuit conferences, and there have been judicial and legislative efforts to invigorate the judicial councils. Furthermore, there is new leadership. As of October 1, 1981, seven of the twelve chief circuit judges had served for less than two years. Of these seven, one—in the new Fifth Circuit—had formally become chief judge that day, four had served for less than one year, and two had served for less than two.

One senses a contrast between the administrative approach of some of the current chief judges and that of their predecessors, some of whom served much longer than average[13] and may have imbued their circuits with expectations of personalized administration by the chief judge. Several chief judges reported that predecessors had sought to "have a hand in everything" and had delegated relatively little—their approach could be characterized as circuit administration from the hip pocket. The chief judge's personal attention to detail took root when the circuits were smaller and the responsibility for overall supervision was less onerous. Increasingly, chief judges wish to avoid detailed personal involvement in all aspects of circuit business and thus are seeking to delegate much of this responsibility to the circuit executive and to committees of judges.

Current Conditions May Require a Change in Administrative Approach

The transition in administrative approaches described above appears to be directed in part by changing circumstances. Perhaps the most important impression we have gained from this inquiry is that chief circuit judges are facing a double bind created by the

12. The Omnibus Judgeship Act of 1978, Pub. L. No. 95-486, § 6, 92 Stat. 1632, authorizes any court of appeals with more than fifteen active judges to constitute itself into smaller administrative units.

13. Since 1959, when circuit judges over the age of 70 years were barred from serving as chief judges (Pub. L. No. 85-593, 72 Stat. 497 (1958)), the average tenure for chief judges has been sixty-four months, or 5.3 years, slightly less than the maximum of 7 years (plus whatever additional period is necessary for a successor to qualify) to be allowed under statute starting October 1, 1982 (Pub. L. No. 97-164, §§ 201-202; also forbids judges 65 years or older to become chief judges). Appendix B lists the chief judges in each circuit who have served since 1959 and allows comparison of their tenures.

growth in the size of the judiciary, on the one hand, and the desire to maintain traditions of close personal relations with their colleagues, on the other. In more than one interview, we heard the chief judge referred to as a "father figure" (chapter three describes some specific manifestations of this attitude). There is every reason to believe that as the number of district and appellate judges in a circuit grows, the time and energy required of the chief judge to minister to individual problems will grow commensurately. Chief judges may find it necessary to restrict the amount of time and attention they devote to solving others' individual problems, to further restrict their judicial case work, or to delegate more administrative duties. In fact, they will likely be forced to do all three things.

This shift in administrative approach is not simply a result of details grown too numerous for the chief circuit judge to attend to personally. Rather, it reflects an affirmation of the view that all judges should share in the circuit's administration, with that sharing orchestrated by the chief judge. This view is consistent with the current effort, catalyzed in part by recent legislation,[14] to reinvigorate the judicial councils. As the number of judges in each circuit grows larger, more coordination and managerial guidance will be required to accomplish the goal of administration based on collegiality and shared responsibility. In other words, if it is true that federal judges will not accept autocratic rule from chief judges—even if they once did—the chief judges' responsibility must all the more become one of creating conditions and arrangements by which judges can share effectively in the administration of the circuit. As one timely example, chief judges might spend less time supervising the preparation of the agenda for the circuit judicial conference and more time facilitating administrative channels by which all judges could participate in setting the agendas for various segments of the circuit conference.

There is some evidence that the change in administrative approach we perceive in the federal circuit courts runs parallel to a change in administrative approach in the state supreme courts. A recent National Center for State Courts survey of twenty such courts found a tendency to adopt "a modified executive model," in which "the chief justice is a strong administrative head of the court system but presents major policy issues to the full supreme court for resolution." To the study's authors, this model may "reflect the ultimate accommodation of traditional collegiality to the demands of a judicial administration in the modern era."[15] Note,

14. Pub. L. No. 96-458, 94 Stat. 2035 (1980).

15. R. Tobin & R. Hoffman, The Administrative Role of Chief Justices and Supreme Courts 6 (National Center for State Courts 1979).

however, their implicit presumption that in the state supreme courts, at least, collegiality is a tradition to be accommodated and strong executive leadership is a modern virtue. Strong executive (as opposed to personal) leadership by chief judges is not a tradition in the federal courts. Indeed, the 1974 Judicial Conference policy statement on chief judges' authority describes a very weak office: "A circuit council may delegate limited power to the chief judge of the court of appeals to act on its behalf, but such power shall not extend to the adoption of general rules or to the taking of final action with respect to a particular judge or other person."[16] Thus, the goal in the circuit courts is not to maximize strong executive leadership as far as collegiality will allow. Rather, it is to use executive leadership to maximize efficient administration that is at the same time collegial administration.

16. *Powers, Functions and Duties of Circuit Councils*, Report of the Proceedings of the Judicial Conference of the United States 8, 9 (Mar. 1974).

III. HOW CHIEF JUDGES FULFILL THEIR ADMINISTRATIVE RESPONSIBILITIES IN THE APPELLATE COURTS

What follows is a description of how the chief judges fulfill administrative duties within their circuit and court.[17]

Judicial Organizations

The chief circuit judge is the designated administrative head of the court of appeals and has numerous statutory and unofficial duties. In addition, Congress has established several federal judicial administration organizations and has provided chief circuit judges with the opportunity for close involvement in all of them. Every circuit and national appellate court chief judge is a member of the Judicial Conference of the United States.[18] Furthermore, the chief judge is directed to convene, and to preside over, meetings of both the circuit judicial council[19] and the circuit judicial conference.[20] Congress has also provided for periodic sentencing institutes in the circuits, to be convened at the request of either the attorney general or, as is more common, the chief circuit judge.[21] Moreover, the Federal Judicial Center conducts other educational programs on a circuit basis, and under a Center policy requested by chief judges, the chief circuit judge is the initial point of contact.

Our interviews focused on the chief judge's highly intertwined roles in administrative leadership of the court, in determining the business of and conducting the various circuit-based meetings and Center programs, and in tasks connected with participation in the Judicial Conference of the United States.

17. This material follows a somewhat different organizational scheme from that of the list of duties provided to the chief judges and reproduced in appendix A.
18. 28 U.S.C. § 331 (1980).
19. 28 U.S.C. § 332(a) (1980).
20. 28 U.S.C. § 333 (1980).
21. 28 U.S.C. § 334 (1980).

Chapter III

Judicial Councils and Courts of Appeals

At the time of our interviews the circuit judicial councils were in a state of transition, in anticipation of the statutory change, effective October 1, 1981, providing for district judges to assume council membership.[22] Most councils planned to meet less frequently than they did when the council membership was the same as the active membership of the court of appeals. The councils may nevertheless become the instrument for more activist circuit-wide management by the chief judge and council. One new chief judge characterized the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 as a "legislative mandate" that the judicial councils be more active.

Prior to the change in membership, most circuit council meetings were subsumed within regular and relatively frequent court meetings, at which the appellate judges discussed the judicial business of the court of appeals.[23] With the inclusion of district judges, it has become necessary for the councils to maintain a specific agenda of council-only business. We found great variation in the number of council meetings per year, which ranged from two to twelve, and in the length of council meetings, which ranged from less than an hour to more than a day and a half. It appears that in many of the circuits, councils, which had been meeting on a monthly or bimonthly basis, are reverting to the statutory minimum of meeting twice a year,[24] although the appellate judges meet more frequently than that to consider court of appeals business.

There are some similarities in the manner in which chief judges deal with their judicial council responsibilities. Much routine judicial council business is statutorily assigned, such as approval of district court plans on such matters as jury selection,[25] speedy trial,[26] indigent representation,[27] and various actions concerning magistrates.[28] Councils are also directed by statute to resolve controversies over where district judges must maintain their residences,[29] to decide how the district courts should allocate cases,[30] to approve court quarters and accommodations,[31] to consent to district court

22. Pub. L. No. 96-458, 94 Stat. 2035 (1980).
23. This was the predominant pattern in the twenty state supreme courts surveyed by Tobin and Hoffman. *Supra* note 15, at 14.
24. 28 U.S.C. § 332(a)(1), as amended by Pub. L. No. 96-458, 94 Stat. 2035 (1980).
25. 28 U.S.C. § 1863 (1980).
26. 18 U.S.C. § 3165(c) (1980).
27. 18 U.S.C. § 3006A(a) (1980).
28. 28 U.S.C. §§ 633(b) and 636(c)(1) (1980).
29. 28 U.S.C. § 134(c) (1980).
30. 28 U.S.C. § 137 (1980).
31. 28 U.S.C. § 142 (1980).

decisions to pretermit a regular court session,[32] and to certify to the Administrative Office that retired judges are performing "substantial judicial service" and are thus eligible to retain chambers and staff.[33] In addition to all this and more, a council, according to a widely quoted if less understood phrase, is to "make all necessary and appropriate orders for the effective and expeditious administration of justice within its circuit."[34] (This list hardly exhausts the duties that the judicial councils may perform, however.[35])

Although any of these duties is potentially controversial, the majority are routine. In all but a few circuits, the bulk of routine business is done by mail, sometimes on an "absent objection" or "If I don't hear from you in ten days" basis, and this business is normally validated at the next judicial council meeting. One circuit that does little business by mail has a "noncontroversial" and "potentially controversial" list of council agenda items. Where committee systems are active, the committees take the initial responsibility for reviewing items prior to the agenda's distribution, and in at least two circuits, committees are empowered either to take final action for the council or to refer the matter back to the council. The executive committee of the council in one circuit, and the substantive committees in the others, are also so empowered.

The chief judges reported little variation in how they prepare for council meetings and in how they coordinate follow-up action. In almost all the circuits, both the chief judges and the circuit executives maintain a "running file" of agenda items, trading items between one another's files. Usually, the circuit executive is sufficiently familiar with both the business of the council and the chief judge's wishes that agenda preparation does not become a time-consuming or rigidly structured process. In only one circuit were we told that council members are canvassed prior to a meeting to

32. 28 U.S.C. § 140(a) (1980).

33. *See* Report of the Judicial Conference of the United States 21-22 (Sept. 1950); Report of the Proceedings of a Special Session of the Judicial Conference of the United States 245-46 (Mar. 1958); *Powers, Functions and Duties of Circuit Councils, supra* note 16, at 11.

34. 28 U.S.C. § 332(d). This provision was amended in 1980 by Pub. L. No. 96-458, the Judicial Councils Reform Act. The council's orders were to be "appropriate" as well as "necessary." The orders' objects became the administration not of "the business of the courts," but of "justice," and indeed, "[u]nless an impediment to the administration of justice is involved, regular business of the courts need not be referred to the council." The councils were authorized, by this section, to hold hearings, take testimony, and issue subpoenas (28 U.S.C. § 332(d)(1)), although it appears that the hearings were authorized primarily for use in judicial discipline proceedings. Remington, *Circuit Council Reform: A Boat Hook for Judges and Court Administrators*, 1976 B.Y.U. L. Rev. 695, 726-27.

35. Other legislative duties and Judicial Conference policies regarding the councils can be found in a statement adopted by the Judicial Conference in March 1974; *see Powers, Functions and Duties of Circuit Councils, supra* note 16, at 8-12.

learn of items they wish to add to the agenda. In another circuit, a draft agenda is circulated to the whole council to let them add items if they wish.

More typically, agenda preparation is passive; judges who want to put items on the agenda may, although they are not specifically asked to do so. In only a few circuits is there an established mechanism for obtaining the recommendations of staff in the court offices concerning items that should go on the agenda. In courts with committees that, among other things, are responsible for supervising the various offices of the court, items are added to the agenda through these committees. Otherwise, the circuit executive is the channel.

In several interviews, chief judges said that without monitoring, agendas could become unwieldy, burdened with relatively unimportant items not requiring council consideration. At least one chief judge has decided to be more than a funnel for items suggested by judges that could "just as easily be discussed in the hall." In another circuit, a new chief judge deliberately shortened what had been a massive agenda—a legacy of a prior chief judge who had sought to illuminate every detail possible for the council—to a much briefer document. If councils become less passive concerning their management responsibilities, such changes may appear in more circuits and thus help to focus council activity on the matters most deserving of their attention.

Follow-up on those judicial council actions requiring additional work is almost uniformly left to the circuit executive. "Delicate" matters, such as a judge delinquent in his caseload, are usually handled by the chief judge or other judges, but even this is not a rigid rule. If the chief judge sends a letter or memorandum to the circuit executive stating the routine follow-up actions necessary, it is typically as a formality or a reminder for the chief judge because in all but one of the circuits with a circuit executive, the circuit executive keeps the minutes of the council. In the remaining circuit, the clerk keeps the minutes; the circuit executive thought the clerk would continue to do so even after October 1 so that the circuit executive could participate more fully in the discussion of the various management problems that come before the council.

There appears to be greater variation among the circuits in how the chief judges actually conduct the council meetings. But the important point is that regardless of how the meetings are conducted, they can serve as a catalyst for action. In one circuit, the chief judge reported that monthly council meetings were quite amiable because he undertook to resolve potential controversies informally and to arrive at consensus before the meeting. When consensus

could not be achieved, the matter was held over. Another circuit, whose chief judge stressed its high level of collegiality, prides itself on a tradition of considerable written exchange of views among the judges. The written messages can evidently be quite pointed, but because of them the disposition of even controversial matters at the council meeting itself is obvious and is handled quickly. The council meeting, in all these cases, is the instrument for reaching consensus.

There is some use of committees in all but two circuits; however, the distinction between court and council committees, impelled by the recent judicial council legislation,[36] was but dimly defined in most circuits at the time of our interviews. The number of committees on a given court as of mid-1981 ranged from four to more than thirty; these included both standing and ad hoc committees. The specific activities of these committees are best discussed within the context of our treatment of the chief judges' administrative duties. Several summary comments about committees are in order, however. Among the uses of the committees, which vary tremendously, are the following:

Long-range planning. Four circuits have used committees to study possible reorganization of the circuit judicial conference. One circuit appointed an advisory committee on planning for the district courts, which included four subcommittees chaired by prominent members of the legal or academic communities.

Monitoring court officers and offices. At least two circuits, both relatively large, use committees or "committees of one" (i.e., monitoring judges) to superintend the work of all the court offices, and five other circuits use committees to supervise one or more offices (e.g., library, clerk's office, or staff attorney's office). Several court officers praised this arrangement, which protects them from judges' conflicting, ad hoc requests for services and provides ready access to the court-council decision-making process (the committees, for example, present the offices' items to the council).

Selecting officers. The committees just described are responsible for selecting the various court officers. If such committees are not in place, ad hoc committees usually are appointed for this purpose.

Special problems or projects. A review of the total list of circuit committees presents a vast array of subject matters thought to be appropriate for committee attention, ranging from interlocutory appeals, the Bankruptcy Reform Act, and orientation of new circuit judges to housekeeping and space. Most circuit chiefs appear to regard committee work as a responsibility to be distributed evenly

36. Pub. L. No. 96-458, 94 Stat. 2035 (1980).

among at least the active circuit judges. In only one circuit did we encounter a chief judge who would not ask judges to perform committee work if they did not wish to do so. All the chief judges, however, asserted that they take special care to select willing members for important committees.

The actual level of activity of these committees is difficult to assess. In several circuits, there were intimations that the committees are more form than substance. Interviews with several judges in one circuit revealed their unawareness of the overall committee structure and, in the case of one judge, even of the committees to which that judge was assigned. It may be that courts are burdened with a committee structure that is more extensive than necessary. Committees appointed to deal with a new and specific problem often continue indefinitely. Moreover, without some provision for staff, committees tend to "wither on the vine."

Circuit Judicial Conferences

Like the operations of the circuit judicial councils, the operations of many circuit judicial conferences are in transition. Planning and holding a circuit judicial conference involves numerous logistical details, and the conferences are increasingly addressing broad policy questions:

- What should the general and specific nature of the agenda be?
- Who should participate in shaping the agenda?
- To what degree should conference membership represent the various segments of the bar of the circuit?
- To what degree should there be opportunity for meetings of specific groups—for example, all chief district judges, or bench and bar from specific districts, or bankruptcy judges—at the conference? Should the annual conference be the forum and vehicle for networks of committees—bench-bar committees, for example—in the circuit's districts?

Current chief judges' involvement with preparation for circuit judicial conferences reflects a diminution of activity from that of their predecessors, when chief judges personally prepared the agenda and sometimes even inspected the hotel. Most of the chief judges are little involved in logistics for the conference, which are left, in all but one circuit, to the circuit executive or clerk, who appears to have relatively wide latitude in handling the details, working perhaps with local judges. In the one exception, the committee

of lawyers that plans the conference program also attends to these logistical details. Most chief judges still send the letters of invitation to guest speakers and to dignitaries such as the circuit justice, but this is not a great burden.

In three circuits, the program agenda is prepared mostly by lawyers in the circuit—by the bar of the host district, by the bar association of the circuit, or by members of a particular law firm. More typically, the chief judge appoints a planning committee of judges of the circuit to prepare the conference agenda. In several circuits, the planning committee rotates among the states. At least two circuits use a standing committee to give continuity to conference planning. The chief judges' involvement with these planning committees varies somewhat; most of the judges restrict themselves to review and approval of proposed agendas and invited speakers.

Most chief judges still exercise their prerogative to adjust details of the circuit conference and influence its program agenda—whether prepared by lawyers or planning committees—but they are increasingly shifting their attention to the more basic matters of conference composition and the nature of conference activities. Their object is to change the circuit conference from what one chief judge described as an "old boy" social gathering to an instrument for effective bench-bar and intracircuit communication and for consideration of administrative policy matters. The institution of the circuit conference has, in the last several years, gone unchanged or unexamined in only a few circuits.[37] Four of the eleven circuits examined in this study have made major changes in the conference program or agenda, including, for example, the establishment of sessions for judges within a district or state to facilitate discussion of administrative or procedural problems. Three other circuits have considered major changes but have adopted less consequential ones. Another circuit has adopted minor changes, and one has only recently begun a basic review of its conference.

37. Reports of four committee investigations of circuit conferences are available, but they do not discuss the totality of national activity in this area. The Eighth Circuit, for example, has changed the composition of its conference considerably, using it as a basis for bench-bar federal practice committees in each district. The reports of the four investigations of circuit conferences are: *Final Report of Committee on Reorganization of the Ninth Circuit Conference and Conference Committees*, 75 F.R.D. 553 (1976); Report of the Third Circuit Lawyers Advisory Committee (LAC) re Format and Structure of Third Circuit Judicial Conferences for 1979 and Beyond (1978) (on file at the Federal Judicial Center's Information Services Office); *Report of the Special Committee to Evaluate the Judicial Conference of the Seventh Federal Circuit*, 86 F.R.D. 579 (1980); Revised Preliminary Report of the Second Circuit Judicial Conference Evaluation Committee (July 1981) (on file at the Federal Judicial Center's Information Services Office).

Periodic Meetings with Chief District Judges

Chief circuit judges meet with individual district judges on a host of occasions—at circuit conferences, swearing-in ceremonies, Federal Judicial Center educational workshops, and periodic meetings held by judges in a particular district. In five of the circuits the chief judge also meets regularly with the circuit's chief district judges. Such meetings were specifically urged by the Judicial Conference in 1974.[38] (In one circuit, a former chief judge abandoned his predecessor's practice of meeting with the chief district judges, and the current chief judge is disinclined to reactivate the meetings, since the district judge representatives to the newly constituted circuit councils will include several chief district judges.) The meetings with chief district judges occur from one to four times a year, and three circuits hold a meeting at the time of the circuit judicial conference. Their major purpose is to provide the chief circuit judge with the views, concerns, and interests of the chief district judges and an opportunity to develop rapport and discuss general matters of circuit-wide policy with them. In only one circuit is the meeting used to review the state of the district courts' calendars.

Educational Programs

Judges also convene at the educational programs sponsored by the Federal Judicial Center. The programs include sentencing institutes held pursuant to 28 U.S.C. § 334, continuing education workshops for district judges (to which circuit judges are invited), and other programs sponsored by the Center within a particular circuit. Chief judges' involvement in the preparation and conduct of these programs is uniformly minimal. In most cases, chief judges appoint planning committees to develop agendas for the programs; a good deal of work—logistical and otherwise—is done by the circuit executive. All chief judges reserve the prerogative to review the agenda and perhaps suggest modifications. The chief circuit judge typically addresses any educational meeting of judges within the circuit and sometimes other meetings as well.

Few chief judges take an activist approach to curriculum development. One said that "he wants to be sure, if the judges are taken away for a week [e.g., to a sentencing institute], that the program

38. "The chief judge of the circuit, as a representative of the council, should periodically call a meeting of all the chief judges of the district courts to discuss with them matters of mutual concern." The Conference suggested that minutes be furnished to all judges of the circuit and that district judges not only recommend matters for council consideration but also learn what action was taken. *Powers, Functions and Duties of Circuit Councils, supra* note 16, at 8.

is good." He also suggested to the planning committees that certain workshop topics were repetitive of an earlier workshop. Another chief judge indicated that he had clear curricular goals for these meetings and that he wished to play an active role to ensure that they were met. This chief judge expressed disapproval of the content of a recent sentencing institute and indicated that had he had more time to give to the creation of the agenda, the institute curriculum would have been different.

Chief judges who want to be involved in curriculum development said that their overall understanding of the curricular needs of the judges in the circuit is better than that of any other individual and that they are thus in a good position to help prepare the program agendas. Others pointed out, however, that chief circuit judges have no institutional position that necessarily gives them more knowledge than their colleagues about the nature of the cases and the specific problems facing district judges; they noted that chief judges with reduced caseloads are in fact more sheltered than their colleagues from a full view of the flow of cases through the circuit court.

Judicial Conference of the United States

Chief judges' administrative duties also extend to the Judicial Conference of the United States. By statute the chief judge of each circuit and national appellate court is a member of the Conference[39] and may thus devote his energies to preparation for the Conference, dissemination of information on Conference proceedings, and certain other Conference-related activities. (The brief tenure of some of the chief judges we interviewed meant that they had a limited sense of how they would commit time and energy to the Conference in the future.)

There is significant variation in the degree of time and energy the chief judges devote to preparation for the Conference. Some said they skim the reports of the Conference committees and glance at the appendixes. They might also use a digest prepared for them by the circuit executive; almost all circuit executives reported that they read the reports on their own initiative and provide the chief judge with information about items they regard as important. Some chief judges reported spending up to two days reviewing the material, although this may have been because they were new to the job and did not want to be unprepared at the Conference. One experienced chief judge, however, still reads the reports closely. One or two chief judges said that although they prepare for each

39. 28 U.S.C. § 331 (1980).

Conference, they find it much more helpful to seek their objectives through year-round contact with the various committees of the Judicial Conference.

The few judges who give more than cursory attention to the committee reports do so for the numerous subtleties in them that would be recognized, they say, only by those who participate in the Conference. Detailed perusal of the committee reports and appendixes gives these chief judges a sense of Conference activity that they cannot get from a summary. One chief judge reported that review of the Intercircuit Assignment Committee reports provides good clues regarding potential visiting judges.

Chief circuit judges do not normally undertake formal canvasses or surveys of judges in the circuit as part of their preparation for the Conference. Two survey the council, at least on matters of special interest, and one routes selected items to judges known to be interested in them or refers the reports to court officers. The majority do nothing, confident that they already know the positions the judges in their circuit would take on a particular issue. On matters of significant controversy, such as judicial conduct canons governing membership in private clubs, the relevant Judicial Conference committee may itself survey all judges and then disseminate this information.[40]

Judges of the circuit learn of actions taken by the Judicial Conference in various ways, but almost every chief judge said that it was necessary to provide some notification, simply because the official reports of the proceedings of the Conference appear several months after the Conference is held and press accounts of Conference activity are skimpy at best. The level of reporting activity varies considerably, however. None of the chief circuit judges said that they regularly send written reports to the judges of the court of appeals or the district courts. But almost all said that they advised the circuit judges at the subsequent judicial council meeting of nationally significant or circuit-related Conference activity, and one chief judge stated that he also informs chief district judges of significant Conference action at his next meeting with them. In five circuits, the district judge member of the Conference prepares a written report for the district judges in the circuit; in three of these circuits, copies go to the circuit judges as well. This written report describes the deliberations at and results of the Judicial Conference; the chief judge praised this arrangement in every circuit that had it. The circuit executive may provide logistical support in the dissemination of this document.

---

40. *See* Report of the Proceedings of the Judicial Conference of the United States 26 (Mar. 1981).

Relationships with Judges

Chief circuit judges, only in part because of statutory provisions, traditionally bear responsibility for dealing with a wide range of situations involving the appellate and district judges in the circuit.

General Problem Solving

The chief circuit judge inevitably is viewed, to use terms drawn from the interviews, as a "father figure," "father confessor," or even "house psychiatrist." These phrases reflect the general attitude that the chief judge should serve as the ultimate point of reference for judges in the circuit. It is difficult to describe this phenomenon with precision. Most chief judges, however, reported that they receive numerous letter and phone inquiries, from district as well as circuit judges, as a result of their position. They are asked to provide advice, to help resolve problems, and to acquire services. The inquiring judges call the chief judge either because they think he is the person most likely to be able to resolve the problem or because they think it important to know the chief judge's view of a situation before proceeding.

Some of these inquiries are statutorily rooted; for example, 28 U.S.C. §§ 332(a) and 333 require judges who wish to be excused from meetings of the judicial council or the annual circuit conference to obtain permission from the chief judge. Other inquiries vary with the circuit and include such matters as whether recusal is advisable in a certain case, the propriety of a certain extrajudicial civic assignment, or general advice for dealing with the media. Circuit executives reported that they receive calls from judges seeking clues about the chief judge's disposition or likely reaction to a particular situation.

Chief judges who gain reputations as problem solvers or skilled counselors will increase the resulting burden because success will only breed more requests. Although we did not attempt to quantify the burden of these inquiries on the chief judges, references to "constant interruptions," "a lot of telephone traffic," and callers' failure to "realize the time the calls take" occurred frequently in the interviews. Geography may affect this phenomenon, according to a chief judge whose circuit includes large rural areas. In his view, judges who are isolated from colleagues may turn more frequently than other judges to the chief circuit judge.

Chief judges offered three distinct ways to mitigate this burden: diverting inquiries, allocating set times for dealing with inquiries, and establishing "standard operating procedures." Some requests for help in problem solving can be diverted by asking the caller to

deal with another judge, perhaps a circuit judge who has specific responsibility for the area in question or the caller's chief district judge. Or the caller might be asked to deal with the circuit executive on specific matters within his domain. The point of mentioning these diverting techniques is not because they are novel, but to illumine the fact that they will help the chief judge only if there is an established presumption that such calls should be directed to others. For example, one chief judge who encourages district judges to deal with their chief district judge said that he rarely gets direct inquiries from district judges; he maintains ample contact with them at workshops and conferences in his geographically compact circuit.

In addition to diverting inquiries, some chief judges are reassessing the costs and benefits of taking any phone call from a judge at any time or of returning such a call immediately. One chief judge related that although he does not wish to be discourteous, he has begun to restrict when he will receive calls, setting aside certain times of the day during which he will handle problems directed to him by telephone.

A final way to reduce the burden of personal problem solving is to make would-be callers aware of what the chief judge would likely say, by disseminating the procedures or point of view that the chief judge would apply to a problem. As noted later in this chapter, several chief judges have advised the judges of their circuit of the standards they will apply when reviewing Criminal Justice Act payment requests that are over the statutory maximum. One court has published a set of cumulative "standard operating procedures," detailing steps to be followed in such routine matters as acquiring equipment or securing the assistance of temporary employees; the chief judge attributed a "sharp decrease" in his administrative time to the publication of these procedures. Some courts have included internal administrative policies—for example, "that all judges and other units of the court would obtain word processing equipment that is compatible"—in their written internal operating procedures, but the latter are generally something other than comprehensive standard operating procedures for the circuit's administration.[41] Other courts have promulgated procedures in particular areas such as hiring. No such set of procedures can cover all potential problems, and some of the most difficult, involving delicate personal relations, will continue to come to the

41. The Federal Courts Improvement Act of 1982, Pub. L. No. 97-164, § 208, mandates the publication of "[t]he rules for the conduct of the business of each court of appeals, including the operating procedures," but this does not seem to be directed at internal administrative operations.

chief judge. Nevertheless, establishment—and full dissemination—of succinct standards or procedures whenever feasible can serve to lighten the burden on chief judges.

Dealing with Allegations of Judicial Unfitness and Misconduct

How to deal with judicial unfitness—broadly defined to include misconduct, job-impairing health, or even extreme caseload tardiness—has been the subject of legislative action and intense internal debate within the judiciary. At the time of our interviews, this situation was in transition, as circuit courts examined the operation of the complaint procedures they used then in anticipation of possible modifications pursuant to the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980.[42]

The statute notwithstanding, there are two specific types of allegations of judicial unfitness. One type can be called "external complaints." Filed from outside the federal judiciary, these are presumably the complaints that will most often engage the mechanisms created by the statute. The other type are "internal complaints," brought to the chief judge by other judges. There is apparently nothing in the statute to preclude a judge from filing a complaint against another judge. Nevertheless, it is reasonable to expect judges to continue to communicate informally and confidentially about problems with their colleagues that may not be publicly visible or, if visible, are not the type that lawyers would be likely to report. One chief judge observed, however, that after public complaint procedures are fully established, judges might not continue to call attention to problems informally and privately, lest they interfere with a statutorily prescribed procedure.

Either on their own initiative or in response to a Judicial Conference recommendation in March 1979,[43] most of the circuits had procedures in place prior to October 1, 1981, for receiving complaints against judges from attorneys and other members of the public. Chief judges in almost all courts characterized the bulk of such complaints as minor in number and negligible in substance, usually involving the merits of a judge's decision or procedural ruling. (This characterization seems accurate regarding the circuits' experience since October 1, 1981.) Consequently, the chief judges reported spending relatively little time investigating these external complaints, although one chief judge subjects every complaint to a thorough staff investigation and has the staff prepare a proposed response, on the view that "someone has to go through it." Another

42. *See* Pub. L. No. 96-458, § 3, 94 Stat. 2035, 2039-40.

43. Report of the Proceedings of the Judicial Conference of the United States 4-5 (Mar. 1979).

chief judge circulated a proposed order disposing of a complaint to the other members of the council and incorporated their comments into the final order; he did this in part to strengthen "the recourse to collegiality" on the court. By contrast, another chief judge used (at least prior to October 1, 1981) a set of fairly standard letters and, when a complaint was received, directed his secretary to prepare the appropriate letter for the complainant and for the judge complained of, inviting comment at that judge's option.

In addition, other judges may be asked to conduct investigations. One circuit established a judicial misconduct and disability screening committee. Occasionally, chief judges ask the resident circuit judge to investigate a complaint against a district judge. Generally, however, the major concern about external complaints was that the statute would encourage frivolous complaints, leading to a problem of numbers if not of substance.

A different type of demand on the chief judge's time and energy is created when internal judicial branch sources call attention to evidence of possible judicial unfitness—typically involving judges with mental or physical health problems sufficient to impair seriously their ability to conduct their office or judges who behave questionably on or off the bench. These problems do not usually achieve public notoriety unless they fester for some time. Generally, the chief judges reported that internal complaints were less frequent than external complaints but that when they occurred they took a good deal of time to resolve. Unlike the more routinized procedure used to handle most external complaints, an internal report of a problem means that the chief judge is "likely to go and see" the object of the report, regardless of that judge's court or location. As one chief judge put it, he personally investigates such internal complaints because "morale is important," collegiality cannot be "sacrificed," and both would be threatened if a judge's sensitive problems were illuminated for all his colleagues to see. Some chief judges reported using resident circuit judges to make initial investigations of allegations involving district judges in the circuit.

Dealing with judicial unfitness is an aspect of the chief judge's duty that is difficult to quantify or even to describe because of the sensitive nature of the relationships and the varying nature of the problems involved.

Case-Flow Management in the Court of Appeals

Managing the court of appeals case flow presents chief judges with various tasks in recruiting judges from the district courts of

the circuit or from other circuit courts to sit temporarily on the court of appeals; in taking specific action to clear backlogs in opinion production; and to a much lesser degree, in designating appellate calendars and panels and assigning opinions. More generally, some chief judges have been active in designing and implementing innovations to speed the flow of cases.

Designation of Calendars and Panels and Opinion Assignment

Few chief judges are greatly involved in the actual designation of judges of their court to its appellate panels, in the preparation of the calendars of cases to be assigned to those panels, or in the matching of panels to calendars. Chief judges' involvement in the delicate process of assigning cases to specific panels is extremely limited, lest there be any appearance that the chief judge is trying to influence a case's outcome. Indeed, most courts have developed one form or another of random assignment for this reason.

The circuits' established procedures for these tasks are highly similar from court to court. After the cases are weighted or screened—if the particular circuit provides for either process—the clerk's office usually prepares the calendars of cases. Typically, either the circuit executive or the clerk arranges the panels; the chief judge is available to resolve problems in panel assignment, including those that may require visiting judges. In only three circuits are judges more heavily involved. In one circuit, the chief judge spends a day or two reviewing the panels as prepared initially by clerical personnel (to be certain that all judges' preferences for sitting days have been accommodated) and identifying vacancies to be filled by visiting judges. In another circuit, a "calendaring judge" is used, and in a third a "scheduling committee" (with substantial assistance from the circuit executive) is responsible for this task. In a few circuits, the chief judge might review the schedule of hearings simply to catch irregularities. In four circuits the judges of the court are surveyed to determine their preferences regarding when they would like to sit, and of course these judges have an opportunity to review the schedule and request adjustments.

We also sought to learn whether chief judges had any involvement in opinion assignment and discovered a specific role in only two circuits. The two chief judges asserted that they have the "whole picture of the court's workload" and referred to the need to ensure that a disproportionate number of opinions were not assigned to one judge; the recommendation of the presiding judge on the panel is still given great weight, however. In other circuits, our interviewees doubted that the judges would tolerate opinion assign-

ment by any but the presiding judge. These circuits rely on informal negotiations or the publication of lists showing judges' outstanding opinions to ensure that any one judge does not receive either a disproportionate share of opinions or more than he can handle at the particular time.

Recruiting Visiting Judges

In all circuits, after the panels have been prepared, the number of active or even senior appellate judges available to fill the panels inevitably is inadequate, and it is thus necessary to secure the services of visiting judges—either district judges or judges from other circuits. Although some do so reluctantly, all the circuits use visitors. Some circuits ask district judges to serve on panels because of the learning experience the panels provide them (in two circuits, there is an informal expectation that district judges give at least one week a year to the circuit). Others are reluctant to use visitors because of the tardiness in producing appellate opinions of district judges pressed by their own trial calendars when they return home. In any event, arranging for visiting judges may prove less onerous now than it has in the past. The Federal Courts Improvement Act of 1982, for instance, requires that a majority of the judges on any circuit panel be judges of that court, unless recusal, disqualification, or an emergency certified by a chief judge precludes it.[44] Moreover, the Judicial Conference Committee on Intercircuit Assignment announced new guidelines to curtail the use of visiting judges at the Conference's September 1981 meeting.[45]

The role of the chief judge in identifying potential visiting judges and in asking them to serve varied considerably at the time of our interviews. In most circuits, the chief judge, other circuit judges, and the circuit executive maintain an informal awareness of judges—circuit and district—who might be willing or even eager to serve on the court. There is in some circuits a strong feeling that invitations must be extended personally by the chief judge. In four circuits, the chief judges issue all invitations, fearing that any judge would be offended if an invitation to serve came from anyone but the chief judge. In three circuits, invitations are the circuit executive's responsibility. In the other courts, there are mixed ar-

---

44. Pub. L. No. 97-164, § 3.

45. The guidelines provide that a circuit which lends (or borrows) active judges on intercircuit assignments shall not be permitted to borrow active judges for assignment to its circuit (or lend active judges to another circuit). There are exceptions to the rule, which does not apply to senior judges or in circumstances in which active judges are needed for a particular case, for example, because of disqualification of judges in the borrowing circuit. *Guidelines for Intercircuit Assignment*, Report of the Proceedings of the Judicial Conference of the United States 99-100 (Sept. 1981).

rangements: The chief judge or a scheduling committee might invite visiting circuit judges; invitations to the district judges might come from the circuit executive, calendaring judge, or clerk.

The circuit executive generally has the responsibility of arranging for the conveniences of the visiting judges, especially those who visit from outside the circuit. In at least one circuit, however, plans have been developed whereby a circuit judge in the host city writes to the visiting judge with a formal offer of assistance in getting established.

Clearing Backlogs

The level of the chief judge's involvement in, and the amount of energy he devotes to, urging colleagues on the court of appeals to dispose of pending cases or outstanding opinions depend on the degree to which the court has established procedures and reporting requirements whereby all judges are routinely made aware of delinquent cases and peer pressure is allowed to work its will. One circuit court distributes internally a list of all opinions outstanding for sixty days or more, and this list is a standard agenda item at regular court meetings; the chief judge reported that he finds relatively little need to prod the judges in his circuit.

Planning Innovations in Case-Flow Management

The line between a chief judge's regular monitoring of the court's case flow and his efforts, sporadic or continuous, to plan and monitor the progress of innovations in case-flow management is not precise. We identified six circuits in which the chief judges appeared to take an active role in the investigation, design, or monitoring of such innovations (e.g., an appeals expediting program or a preargument conference) and five in which their role was passive. Moreover, the activist chief judges were likely to be those in the circuits with the largest caseloads. When chief judges reported that they did not become involved in case-flow management planning, they referred to the adequacies of current procedures and stated that additional work was not necessary. Other chief judges, however, reported examining innovations in other circuits, and one judge said he took himself off the calendar to devote time to such investigation.

Supervising District Court Business

Dealing with Backlogs

By statute, each judicial council is to "make all necessary and appropriate orders for the effective and expeditious administration of justice within its circuit."[46] In only a few circuits are there specific procedures or steps by which the chief judge, perhaps aided by the circuit executive, undertakes to identify district judges or district courts that are not processing cases expeditiously, to determine why, and to take necessary action. This situation, like others, appears to be changing, however, and the passive council activity of past years is giving way to active supervision.

A necessary ingredient for effective supervision of district court case flow is adequate data. One source of such data is the periodic Administrative Office reports "as to the business of the courts."[47] By statute, the chief judge is to submit the reports to the council, which in turn is to "take such action thereon as may be necessary."[48] These reports are compiled from information, submitted by the district judges to the Administrative Office, that indicates (a) cases and motions held under advisement over sixty days and (b) cases awaiting disposition for more than three years. Until 1981, the statute required quarterly submission of the reports to the council; the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 seems to require only semiannual submission of these reports,[49] although the act, presumably by oversight, did not change the requirement that the Administrative Office produce quarterly reports.

A recurring complaint in our interviews was that the quarterly reports arrive too late from the Administrative Office to be of effective use because the information they contain might be up to three months old by the time of their receipt. Thus, some chief judges and circuit executives have made arrangements to receive other data, a practice specifically authorized by the Judicial Conference.[50] In one circuit, district judges were asked to send copies of

46. 28 U.S.C. § 332(d)(1), as amended by Pub. L. No. 96-458, 94 Stat. 2035 (1980), effective October 1, 1981. The admonition in force from 1939 to 1981 did not include the words "and appropriate," and in place of "justice" were the words "the business of the courts." 28 U.S.C. § 331 (1980).

47. 28 U.S.C. § 604(a)(2).

48. 28 U.S.C. § 6332(c).

49. *See* Pub. L. No. 96-458, § 2(b).

50. "Although the circuit council should rely when possible on statistics available from the Administrative Office, it may require the district courts to supply this information by filing reports with the council." *Powers, Functions and Duties of Circuit Councils, supra* note 16, at 9.

the material submitted to the Administrative Office to the circuit executive at the time of the submission. In another circuit, the chief judge and the circuit executive use past Administrative Office reports to identify district judges who appear to have difficulty in keeping their caseloads current. Shortly after the start of the next quarter, these judges are asked about the condition of their dockets and, where needed, are offered temporary help from law clerks or perhaps a visiting judge.

The action chief judges take to secure a timely disposition of cases in the district courts is generally ad hoc and in the form of letters or telephone inquiries to the judge in question. One chief judge uses standard letters to chief district judges that ask about problems suggested by information in the Administrative Office reports. Another wrote "with trepidation" to a chief district judge to ask for an investigation of a judge with cases listed as delinquent in the Administrative Office report, but found that the chief district judge appreciated the "leverage" that his letter provided.

Interdistrict Assignments

According to 28 U.S.C. § 292(b), the chief judge of the circuit must approve all temporary assignments of a district judge from one district in the circuit to another district in the circuit. Most chief judges give personal supervision to such assignments, concerned that they have potential for abuse or at least for the appearance of such.

Only one chief judge reported that he would routinely sign any interdistrict assignment requested by the sending and receiving chief district judges. In another circuit, a committee of the judicial council, working with the circuit executive, manages these requests and also surveys the courts on a quarterly basis to determine their needs for visiting judges. In emergency situations, the circuit executive is authorized to handle the request without recourse to the committee; the chief judge, however, wants to establish a "point system" to determine which judges should be called to provide emergency interdistrict assistance.

Most chief circuit judges reported taking steps to ensure that district judges do not receive interdistrict assignments for any reason other than the host court's need for assistance and thus made it clear that they would not routinely sign orders submitted to them. Their practices range from requiring the chief judge's approval of any preliminary contact between the potential host district and the would-be visiting judge to asserting their authority to veto a proposed invitation by refusing to sign the order. In at least three circuits, the current level of scrutiny was represented as more rigor-

ous than the level adopted by the previous chief judge. At least one circuit chief has formally advised all the district judges that proposed transfers must include a written statement certifying that both chief district judges agree to the transfer. Furthermore, the statement must aver that the visiting judge is "absolutely current with his docket" and that his temporary absence "will not impair the disposition of pending business in his home district."

Chief judges who have sought to strengthen control over interdistrict assignments cited two major reasons: The first is to avoid the use of assignments for personal reasons. The second is that in a particularly sensitive case, when a transfer may be required because all the judges in the district have recused themselves, the chief judge assumes a special obligation to review the qualifications of the would-be visiting judge in light of the particular circumstances of the case.

In contrast to most of the circuits, two circuits use routine standing orders authorizing interdistrict assignment for all the district judges in particular districts. The chief judge in one of these circuits described annual standing designations that allow every district judge to serve temporarily in the other districts in his state. In this circuit, circuit judges are also asked if they would like to be included in a standing designation for assignment to all the district courts in their state. Such annual standing orders are used in more limited fashion in the other circuit, which allows transfer between specified districts to assist courts that have suffered a serious backlog for some time. One of this circuit's standing designations was in fact the result of an intercircuit agreement allowing district judges in a metropolitan area divided by a circuit boundary to transfer within that area.[51]

Approval of Criminal Justice Act Vouchers

The Criminal Justice Act sets out hourly rates and overall maximums for attorneys who provide representation (before magistrates or district or appellate courts) under the act, but provides that payment in excess of the overall maximums "may be made for extended or complex representation whenever the court . . . or magistrate . . . certifies that the amount of the excess is necessary to provide fair compensation and the payment is approved by the chief judge of the circuit."[52] Statutory payment rates were last adjusted in 1970.[53]

---

51. This designation appears to be inconsistent with the *Guidelines for Intercircuit Assignments, supra* note 45.
52. 18 U.S.C. § 3006A(d) (1980).
53. Pub. L. No. 91-447, 84 Stat. 916, 917 (1970).

The burden imposed on chief judges by the review of vouchers for excess payment varies considerably among the circuits,[54] depending largely on the degree to which the chief judges have routinized the process. In no case did we find that they rubber-stamped the other judges' approval of the payments. Nevertheless, chief judges are finding that they cannot give the vouchers the same amount of review and analysis that might have been possible shortly after the statute was passed, when the number of claims was fewer and the rates prescribed by the statute bore a greater resemblance to the money that the attorneys might earn in other situations. Increasingly, chief judges find they must rely on the discretion of the judge who approves the request for excess payment. Chief judges in four circuits have used speeches or memorandums to announce the criteria they will apply in reviewing the vouchers, to help the other judges in making their decisions. Chief judges are also aided in this task by reviews of the requests conducted by the circuit executive or law clerks, as well as by personnel in the clerk's office. Moreover, once approved for payment, the vouchers are analyzed by the Administrative Office for conformity with the statute.

Six chief judges characterized the time spent on review of vouchers as minimal, perhaps amounting to fifteen to thirty minutes a week, although an occasional voucher that clearly seemed unreasonable would demand more attention. The judges who have time for only a brief review of the vouchers said that out of a batch of ten or twenty presented in one week by the clerk's office, at least one might be returned to the transmitting judge for further information or action. At least one chief judge reported that he had personnel in the clerk's office contact the district judge in such cases, specifically because he feared that if he did so personally, it would elevate the importance of the matter too greatly. At least four chief judges said that they always prepare a written explanation for any voucher they modify so that those affected are provided with some reason for the action (one chief judge pointed out the analogy, in this regard, to the need for an appellate court to offer some reason, however brief, for its decisions).

---

54. The situation regarding review of Criminal Justice Act vouchers found in a Center field survey done about five years ago is somewhat similar to that presented in our interviews: In some circuits "the responsibility [was seen as] . . . a rather minor one that took very little time. In other circuits it seems to be the principal routine administrative burden." J.T. McDermott & S. Flanders, The Impact of the Circuit Executive Act 58 (Federal Judicial Center 1979).

Bankruptcy Reappointments

The Bankruptcy Reform Act of 1978[55] provides a mechanism for the reappointment of bankruptcy judges during the transition period lasting until 1984, when the act's presidential appointment provisions become effective. Those whose appointments expire during the transition period are to continue in office unless found not qualified by the chief judge of the circuit. The chief judge, however, is to decide on their qualifications to continue serving after considering a merit screening committee's recommendations.[56] The committees in each state are to be composed of the president of the state bar association, the dean of a law school in the state, and the president of a local bar association in the area in which the bankruptcy judge is located; in each case, the principal may designate someone to serve on the committee in his place. The statute directs the circuit executive to organize the committee and serve as its secretary.[57]

Chief judges do not generally take an active hand in organizing the screening committees. Indeed, one chief judge especially concerned with securing qualified bankruptcy judges said that he doubted his authority to become involved in the appointment process. Because the statute assigns screening committee administration to the circuit executive, the chief judges largely leave this task to the circuit executives. Several chief judges said they occasionally intervened to review prospective committee members; one met with the panel; another intervened informally to ask a committee to talk to the local district judges once he learned that it had not. Several judges reported writing letters of invitation to serve or of appreciation for having served; in one circuit, as the chief judge put it, the circuit executive "writes them over my signature."

The chief judges are required under the statute to use the reports of the screening committees to evaluate the bankruptcy judges' qualifications, and thus, at a minimum, they verify that the reports indeed assert that the reappointment criteria specified in the statute were met. It appears that because the circuit executive is intimately involved in this process, including serving as secretary to the panels and writing the reports, chief judges do not feel obliged to review bankruptcy reappointments in great detail.

---

55. Pub. L. No. 95-598, 92 Stat. 2549.
56. *Id.* at § 404(b), 92 Stat. at 2683.
57. *Id.* at § 404(c).

General Planning

We raised the subject of general, or long-range, planning in our interviews because it is typically included in inventories of management functions. Planning is even hinted at in the Circuit Executive Act, which gives the circuit executive, if the council so directs, the authority for "conducting . . . studies relating to the business and administration of the courts within the circuit and preparing appropriate recommendations and reports to the chief judge, the circuit council, and the judicial conference."[58] We found little inclination among the circuits to engage in formal long-range planning as it is generally defined, that is, setting organizational goals, anticipating developments, and devising means to ensure accomplishment of the goals. Only one circuit has engaged in this task; it has several committees with responsibilities for long-range planning, most particularly the Advisory Committee on Planning for the District Courts, which works with four subcommittees and last year submitted a 209-page final report. Most chief judges dismissed formal long-range planning as an empty exercise that produces reports destined to gather the proverbial "dust on the shelf."

The circuits' disinclination to engage in formal long-range planning may understate the degree to which they engage in ad hoc and incremental planning. Standing committees may undertake such planning in their areas of responsibility. Furthermore, several circuits have used ad hoc committees to assess how particular aspects of circuit administration might be changed, notably the circuit conferences. In the other circuits, the chief judges referred to regular committees and other mechanisms for coordination among chief circuit and district judges. Finally, almost all chief judges indicated that some amount of their time is devoted to space and facilities planning for future courthouse needs, which entails extensive dealings with the General Services Administration.

General Administration

We sought to learn the degree to which chief judges' time and energy are devoted to the range of relatively routine administrative functions necessary for the day-to-day management of a court but not necessarily requiring the active involvement of the chief judge. Five areas stand out: budgeting, personnel management, acquisition of equipment and supplies, courthouse space and security,

58. 28 U.S.C. § 332(e)(6) (1980).

and external relations. Chief judges devote little time to these activities on a regular basis. All review, at least briefly, important management decisions represented in the budget or a proposed hiring. The details of routine budget preparation, personnel management, and security arrangement are left to court staff, perhaps with committee involvement. Of course, that these matters do not require a great measure of the chief judge's time does not necessarily mean that they do not consume a great deal of energy on the part of the circuit executive or other officers.

There may be a lack of clearly defined expectations about the nature of the chief judge's routine administrative functions. In this part of our interviews, support staff we talked to tended to focus on the specifics of a query, when the specifics were offered merely as an example. For instance, to learn the extent of the chief judge's involvement in hiring supporting personnel, we might have asked, "For example, would the chief judge have a formal role in the hiring of a deputy librarian?" The answer provided might well have been that the current deputy librarian was just hired and thus there was no need to hire another. Interviewees would rarely say, for example, "The chief judge is involved in hiring at the deputy librarian level but not below." The responses we obtained may have been due to inartful questioning, but they may also suggest a general lack of formal policy defining responsibilities in routine administration.

Budgeting

The statement of a circuit court's budget needs is not typically a preoccupation of the chief judge aside from his final review of the document with the circuit executive prior to its submission to the Administrative Office. In some circuits, there is early discussion between the chief judge and the circuit executive to agree on general parameters of the budget document. This low level of involvement by the chief judge, however, does not necessarily reflect his abdication of supervisory responsibility, but instead indicates that most circuit executives are able to prepare these materials without intensive supervision because they understand the chief judge's general administrative point of view and are, as one chief said, "trusted to know where the needs are." Because centralized budgeting allows the courts relatively restricted discretion in budgetary matters, a heavy burden falls on support staff to find available funds as special needs arise.

Personnel

At the time of our interviews, the courts of appeals were statutorily authorized to appoint a clerk (who could appoint additional personnel with the court's approval), librarians and library assistants, and a crier and messengers. Staff attorneys were serving in each court although there was no explicit statutory authorization to hire them.[59] The actual point of decision for the hiring of these officials varies among the circuits. The chief judges, either through personal involvement or through review of committee work, usually wished to approve the hiring of the heads of major court offices and perhaps their chief deputies.

Staff attorneys present a case different from that of other mid-level employees because of the important relationship of their work to the court's judicial decisions. In four of the circuits, the chief judge personally interviews each candidate for a staff attorney position, and in four others, court committees interview these candidates. In three circuits, the senior staff attorney (or equivalent) may hire without any substantive review by the chief judge or any other judge. The degree of judicial involvement in hiring mid-level employees, including staff attorneys and others, does not appear to be a function of the size of the court.

In the area of equal employment opportunity, chief judges reported heightened levels of involvement, in part because of pertinent Judicial Conference policies[60] and in part because of personal commitment to the concept. Several mentioned giving special attention to promotion of equal employment opportunity within the court, especially in the clerk's office, the largest employer. This involvement extends beyond the grievance reviews that may be required of the chief judge under the court's equal employment opportunity plan. Almost all chief judges acknowledged that, at a minimum, they remind officers of the need to be aware of and responsive to equal employment opportunity requirements. When asked to sign hiring documents, for example, they seek to assure themselves that the selecting officer has complied with equal employment opportunity requirements.

Equipment and Supplies Acquisition

Eight chief judges reported that they willingly defer to the court officers in the acquisition of even major equipment for the court,

59. Pub. L. No. 97-164, § 120(b)-(c), establishes this authority, specifically authorizing the chief judge, with the court's approval, to appoint a senior staff attorney, who may in turn appoint staff attorneys with the chief judge's approval.

60. *See* Report of the Proceedings of the Judicial Conference of the United States 58 (Sept. 1979); *id.* Mar. 1980 at 5.

although most endorsed the view of a chief judge who said "I would expect to hear about it." Only one chief judge—of a smaller circuit—plays a continuing role in review and approval of equipment for the court, although the chief judge of a larger circuit stated that he reviews all requests for equipment as part of his effort to ensure that the court is taking full advantage of all available technological innovations. A number of chief judges are sporadically involved in acquisition when, for example, a major piece of equipment is to be secured through a sharing arrangement with the district judges in the same courthouse.

Space and Security

Courthouse space and security problems involve no chief judge on a systematic basis, but such problems, when they develop, can be highly time-consuming given the frequent need for drawn-out negotiations with other government agencies, most obviously the General Services Administration (GSA). These negotiations become all the more complex when problems of space acquisition intermingle with problems of security.

Most chief judges minimized the contribution they could make to resolving security problems involving district courts in their circuit and said that district judges tend to regard courthouse security problems as more pressing than they do. This does not mean that a district court security problem cannot become serious enough to receive the chief circuit judge's attention. In one instance, a chief judge found it necessary to write to both the Chief Justice and the director of the Office of Management and Budget to try to resolve a particular district court security problem.

Courthouse space problems, at both the circuit and the district level, more frequently receive the attention of the chief judge. The range of problems with which chief judges have dealt is considerable: securing the repair of a broken lavatory in an isolated district court; resisting efforts to close courthouses; and coordinating a major reallocation of space—with its attendant security problems—in a circuit's main courthouse, for which the chief judge testified before Congress, met with GSA several times, and negotiated with the other judicial agencies involved. Chief judges take this personal role in space negotiations because of the presumed weight of the authority of their office. As one chief judge put it, "I've not been very successful [in dealing with GSA concerning heating and cooling problems within the courthouse], but presumably the title of chief judge counts for something." Another holds "peacemaking and brokering meetings" with the district courts, the bankruptcy courts, and GSA.

External Relations

A final administrative function is the maintenance and promotion of relations with relevant groups in the court's environment, namely, the bar, the media, the community, and other courts. It is difficult to define the burden this responsibility places on chief judges qua chief judges, simply because every chief circuit judge was a prominent jurist and member of the legal and political community before becoming chief judge. It is not always an easy matter to determine whether a particular chief judge was invited to address the state bar association because he is the circuit's chief judge or because he has long been a prominent member of the local legal community.

This external relations function has at least two components: relations with bar and citizens' groups and relations with the media. The bar and its numerous organizations present the chief judge with an opportunity—through speeches, for example—to articulate goals for the circuit or to express particular needs to wider audiences. At least two chief judges consider bar association speeches to be a responsibility of a chief circuit judge, and one reported using these occasions to press Congress on the need for additional judgeships. Beyond these observations, it is difficult to categorize the chief judges' attitudes; one said, for example, that he tries to be "vigorously responsive" to such invitations—not seeking them, but acknowledging an obligation to use them to maintain good relations with the bar.

Regarding the press, no chief judge said he refused to talk to journalists about administrative matters, and at least three judges were favorably disposed to issue press releases explaining important administrative developments. No circuit court currently has a press information office to issue releases concerning the court's judicial opinions, but three chief judges expressed some interest in establishing such an office. One chief judge expressed the "feeling that the press have to be better advised than they are now."

Relations with the state courts in the circuit present another area of potential leadership. Four chief judges expressed varying levels of enthusiasm for the promotion of state-federal judicial councils, and two took pride in having rejuvenated such councils in their circuits. The chief judges' perceptions of the need for such forums vary. In two rural circuits, the chief judges said that state-federal liaison could best be achieved informally. In another circuit, the chief judge said he would not push to reactivate dormant councils; they were dormant precisely because "they had run out of things to do."

IV. CHIEF JUDGES' ASSESSMENT OF THEIR ADMINISTRATIVE ROLES

The information provided in this report may suggest to chief judges procedures worthy of emulation or at least testing. The data do not allow one to say, however, which of the several ways in which chief judges meet their many administrative responsibilities are preferable, nor even which of the general models described in chapter two are better. Nevertheless, the data do provide a composite picture of the importance that chief judges collectively attach to the various tasks that they are or may be called upon to perform. They see some of these tasks as essential, some as important, and some as peripheral.[61] Table 3 arrays the various duties that fall to chief judges, categorized in these terms.

We developed the list presented in table 3 using the following method. To begin, we drew from the documentation in chapter three a list of the various tasks that chief judges perform or might perform. We phrased all statutory tasks in such a way as to deemphasize their ministerial aspects. Thus, instead of listing the task of "signing a Criminal Justice Act payment voucher in excess of the statutory maximum," we listed "close review of Criminal Justice Act vouchers." Then we assigned a ranking to each task on the basis of our review of the interview data. A rating of 1 signified that no, or perhaps only one, chief judge thought the task demanded his personal involvement. A rating of 10 signified that all or almost all chief judges thought the task demanded their personal attention. We labeled ratings 1 to 3 *peripheral*, 4 to 7 *important*, and 8 to 10 *essential*. Although the rankings and therefore the assignments they produced are subjective, they represent our best judgments after a careful review of the interview data.

These terms do not describe how we see those tasks but, rather, how the chief judges collectively regard them. For example, all chief judges would regard it as incumbent upon them, that is, as essential, to investigate and attempt to resolve a problem of judicial unfitness reported by another judge in the circuit. The inter-

61. This categorization is based on the analytical framework used in James, *Role Theory and the Supreme Court*, 30 J. Pol. 166 (1968).

TABLE 3
Chief Judges' Collective Perception of the Relative Importance of Their Administrative Duties

Essential
Circuit council agenda preparation
Chairing judicial council
Internal judicial misconduct complaints
Reviewing bankruptcy screening committee reports
Personnel management (court officers)
General problem solving for other judges
Appointing circuit conference planning committee
External judicial misconduct complaints
Reporting Judicial Conference (U.S.) actions to circuit judges
Important
Supervising interdistrict assignments
Developing and promoting use of circuit council committees
Circuit conference reform
Chairing circuit judicial conference
Recruiting visiting judges for circuit court
Clearing circuit backlogs
Invitations for circuit conference
Regular meetings with chief district judges
Close review of Criminal Justice Act vouchers
Personnel management (mid-level officers)
Space and security problems
Press relations
State court relations
Bar–community relations
Preparation (detailed) for Judicial Conference (U.S.)
Circuit conference program agenda review
Planning appellate case-flow innovations
Dealing with district court backlogs
Peripheral
Designation of calendars and panels and opinion assignment (regular)
General planning
Circuit council follow-up
Reporting on Judicial Conference (U.S.) to district judges
Significant budget preparation and review
Reviewing educational program agendas
Bankruptcy screening committee appointments
Acquisition of equipment and supplies

NOTE: The information in this table is based on interviews conducted between April and August 1981

views make clear, however, that the chief judges collectively regard regular meetings with chief district judges as important but not essential; some regard the meetings as a vital part of the responsibilities of the office, others regard them as less important.

Two aspects of this discussion deserve emphasis. First, these terms describe the chief judges' collective estimation of the importance of giving their personal attention to these tasks. There are individual differences. One chief judge, for example, takes an active hand in panel preparation, but since the majority of chief judges do no more than iron out special problems, if that, we have categorized this task as peripheral in the collective estimation of the chief judges. Second, that the chief judges collectively regard their attending to a particular task as peripheral, for example, does not necessarily mean that they regard the task as unimportant—only that they do not regard it as a task to which they should devote any substantial amount of energy. They may regard a task as unimportant, or they may regard it as quite important but delegable, such as the preparation of the court's calendars and panels.

The list in table 3 serves two purposes. First, it presents a composite picture of how the chief judges weigh the importance of their personal involvement in various administrative duties. Second, by reviewing this list the chief judges can compare how their estimates of essential, important, and peripheral tasks compare with the collective estimates of their colleagues.

V. HOW THE ADMINISTRATIVE COMPONENT OF THE CHIEF JUDGE'S ROLE MIGHT BE STRENGTHENED

In the course of the interviews, chief judges and other interviewees made observations about how chief judges might better equip themselves to serve as chief judges and gain the best possible support of their staffs.

Preparation and Orientation in Chief Judges' Responsibilities

Several interviewees suggested, or agreed when asked, that new or prospective chief circuit judges might benefit from a structured orientation program providing them the opportunity to become familiar with their duties as chief judge. Currently, the orientation within each court is informal: The new chief judge observes the work of his predecessor, accepting some ideas, rejecting others, and developing new ones. At least one newly elevated chief judge, moreover, went off calendar for a month of self-orientation shortly after his elevation. Several chief judges suggested other, more structured forms of orientation.

As it is doing for chief district judges, the Federal Judicial Center could construct specific orientation programs for chief circuit judges. The Center would invite new or prospective judges, and if they wished, the circuit executive, to visit the Center and the Administrative Office, not only to discuss administrative procedures of the two agencies but perhaps also to meet with other chief judges or others knowledgeable in the field for one-on-one orientation sessions.

Several chief judges commented on the benefit they gained from visiting other chief circuit and appellate judges while on intercircuit assignment or while attending circuit judicial conferences as guests. Those chief judges who had not attended other circuit conferences said they thought it would have been helpful to have done so. Consequently, new chief judges might be urged, or at least offered the opportunity, to attend the judicial conferences of other circuits to discuss the administration of a circuit court in a relaxed setting with experienced chief judges and others.

Another comment offered by the interviewees is appropriate to mention, especially in regard to new chief judges. In several circuits, supporting staff worried that the chief circuit judge had little sense of the full range of their duties and activities—actual and potential. Likewise, the support staff were unaware of the full range of activities of the chief circuit judge. We heard these complaints most frequently from circuit executives. In one court, the several officers of the court expressed frustration because the chief judge was not always aware of which tasks he had assigned the respective officers or for which regular tasks each was responsible. These statements echo somewhat similar observations reported in an earlier Center study of circuit executives. The circuit executives, wrote McDermott and Flanders, "have had little guidance as they each defined the scope of their own work. What little guidance was available consists mostly of hopes expressed when the Act was passed, and requests to undertake specific tasks."[62] That study focused on the ambiguity in the circuit executive's role vis-a-vis the clerk of court and described the major barrier to an effective relationship between the chief judge and the circuit executive as the chief judge's reluctance to delegate authority.

When we looked at the relationship between the chief judge and the circuit executive for the present study, we were struck less by the chief judge's reluctance to delegate than by the low degree of familiarity in some circuits with what the chief judge expected of the circuit executive or other officers. A partial solution might be to develop an explicit memorandum of understanding between the chief circuit judge and the circuit executive (and/or other officers) detailing what is expected of the circuit executive and also indicating how the chief judge plans to exercise administrative authority. One new chief judge said he found it very helpful that the circuit executive had prepared for him a notebook listing the various duties he must perform as a chief judge and how the circuit executive might help.

This level of formalism might seem unwarranted in light of the relatively small size of the federal courts and the existing expectation of a close and confidential relationship between chief judge and circuit executive. The potential for ineffectiveness due to misunderstanding, however, appears to be sufficiently great that chief circuit judges might wish at least to consider this option.[63] In a

62. J.T. McDermott & S. Flanders, *supra* note 54, at 218.

63. Prior understandings are important in another area, namely, between chief judges and law clerks. Chief judges occasionally rely on their law clerks for administrative work, and in at least two circuits a law clerk has explicit responsibility (formally recognized by title in one circuit) for some portion of the administrative work. Since most law school graduates seek clerkships to do legal rather than administra-

sense, the memorandums suggested here are but a variation of the "standard operating procedures" that some circuits have already adopted. In this light, it is important that such memorandums also be published, both to advise judges and staff about whom they should bring problems to and to give the arrangements the force of policy.

Recognition of the Importance of Administration

As noted earlier, chief judges generally indicated a reluctance to acknowledge the importance of their administrative activities and downplayed the amount of time and energy they devote to administration. Effective administration, if not as essential *as* effective judging, is nevertheless essential *to* effective judging. Two questions emerge in this regard.

First, is it possible—and if so, is it desirable—to increase recognition that assuming the office of chief judge is optional, not mandatory?

Although the statute that designates the selection of chief judges speaks in relatively mandatory terms about the assumption of the office,[64] it in fact clearly allows those eligible to serve as chief judge to decline to accept the position.[65] We encountered great variation among the chief judges we interviewed regarding whether they actually wanted to be chief judges. Some said they enjoyed administration and enjoyed the position; others said they did not relish the position but thought they were good at administration and welcomed the opportunity; and some said frankly they wished they were not the chief judge, regarding the duty as a burden for which they deserved condolences, not congratulations. Yet none of the chief judges declined the office. This is due in part, we presume, to their strong sense of obligation and responsibility. Furthermore, at least to some degree, the prestige of serving as chief judge, membership on the Judicial Conference, and other such external attributes presumably play a role. Nevertheless, as the office of chief judge grows in importance, it might be useful to mitigate the presumption that a refusal to accept the office would somehow be a

---

tive work, it is important that they be clearly advised at the outset—either by title or by explicit agreement—of any administrative duties that will be expected of them. This is a general observation and does not reflect any confusion that we found to exist currently.

64. Both 28 U.S.C. § 45 (1980) and the revised section to take effect October 1, 1982, pursuant to the Federal Courts Improvement Act of 1982, Pub. L. No. 97-164, § 201, use the word *shall* in describing who shall be chief judge.

65. *See* 28 U.S.C. § 45(c) (1980). Furthermore, common sense dictates that it would be difficult to justify the view that one is obligated to accept the office even if one does not want to serve.

badge of dishonor, especially if another colleague also eligible to serve has strong administrative skills and inclinations.

Congress has taken a partial step toward greater selectivity in choosing chief judges by limiting their tenure to seven years and by providing that judges who could not serve the full term should not, under normal circumstances, assume the position.[66] Limitation on the term of the chief judge was recommended several years ago by the Commission on Revision of the Federal Court Appellate System "to minimize the impact of a chief judge who lacks administrative abilities, while allowing the chief judges who are good administrators sufficient time to have a beneficent effect on the functioning of their circuits."[67]

The second question that emerges is whether it is possible—and if so, whether it is desirable—to establish a presumption, perhaps through a Judicial Conference suggestion, of reduced caseload for chief circuit judges. Some chief judges regard such a presumption as unnecessary because their colleagues would abide by whatever decision they made. Others, however, said that the weight of a Judicial Conference resolution, even if unnecessary to convince other judges of the propriety of such a reduction, might help persuade wavering chief judges to accept a reduction.

Review of Chief Judges' Statutory Duties

One general impression that emerges is that chief judges are to a degree captives of statutory duties assigned by Congress, perhaps on the recommendation or agreement of the Judicial Conference. Some of these statutory duties obviously must be performed by chief judges. Other duties, however, would appear to be open to the discretion of others in the circuit, for example, the task of excusing judges from circuit conference attendance.

The chief judges' limited responsibility in bankruptcy reappointments offers an instructive comment on the role of Congress in shaping the judges' administrative activity. The position of bankruptcy judge is one of great sensitivity. Given that sensitivity, one might have expected the Congress to direct the chief circuit judge to select the screening committees personally or in some other way have a greater role in choosing them. Congress has not hesitated to impose on chief circuit judges the duty to approve personally requests for payment over the Criminal Justice Act statutory maximums. And they, not the chief district judges, must excuse district

66. *See* Federal Courts Improvement Act of 1982, Pub. L. No. 97-164, § 201.

67. Commission on Revision of the Federal Court Appellate System, Structure and Internal Procedures: Recommendations for Change 68 (1975).

judges' attendance at circuit judicial conferences, as well as approve all temporary interdistrict assignments.

Our point is not to argue about whether these duties are necessary to ensure efficient judicial administration. Rather, the point we offer is that Congress has assigned duties to the chief circuit judge that could perhaps be handled by others. Congress looks for some orderly process for granting discretion as each need arises. The most visible figure in the courts is the chief judge, and this office is thus gradually burdened with "one-thing-at-a-time" duties imposed without full regard to their cumulative effect. It would seem more desirable for the Congress to indicate to the Judicial Conference what discretion is to be allowed in the exercise of any particular task and leave it to the Conference to provide for its exercise within the boundaries set by Congress.

APPENDIX A
Project Description Sent to Potential Interviewees

Introduction

The Federal Judicial Center, at the request of the Conference of Chief Judges, has undertaken a study of the administrative roles and duties of the chief judges of the circuit and national appellate courts. Most of the information for this report will derive from interviews with the chief judges (current and former), other judges, and supporting administrative personnel in the various courts.

Listed below is a wide array of administrative tasks and duties, some with statutory bases, that one might expect to find performed in the federal appellate courts, and with which the chief judge might be expected to have at least some association. Obviously, some of these duties would clearly require the attention of the chief judge, while others may not, depending on the court. We realize that within the various courts, there is great diversity as to administrative needs, practices, procedures, and traditions, and administrative tasks in one court may be undertaken in a different way and by different personnel than in another court.

The purpose of the interviews is to gain the interviewees' knowledge and perspective on how these administrative responsibilities are met in the particular court, as well as any insights that they may care to share on possible alternative means of performing these administrative tasks. Listing these administrative tasks is not meant to preclude discussion of any others. Also, it would be helpful to know of particular administrative techniques or procedures used in a circuit that could be considered as prominent candidates for use in other circuits.

A. Relationships with Judges

1. Preparation for and conduct of judicial council meetings
2. Dealing with complaints of judicial misconduct
3. Preparation for and conduct of circuit judicial conferences
4. Arranging intercircuit or intracircuit assignments
5. Preparation for and dissemination of information about Judicial Conference meetings
6. Other—e.g., deciding constitution of three-judge district courts

B. Relationships with Federal Judicial Administrative Agencies

1. Completion and review of reports to the Administrative Office
2. Coordinating with the Federal Judicial Center on educational programs for the circuit
3. Arranging for sentencing institutes
4. Other

C. Certification of Criminal Justice Act Payments in Excess of the Statutory Amount

D. Bankruptcy Transition Duties

1. Appointment of and logistics associated with merit screening committees
2. Designation of panels of bankruptcy judges to hear appeals from judgments of the bankruptcy courts when ordered by the circuit council
3. Arranging for participation of bankruptcy judges in the judicial conference of the circuit

E. Case-Flow Management

1. Design or implementation of procedures and innovations to improve the expeditious disposition of cases within the circuit
2. Other

F. General Planning

1. Design or conduct of studies relating to the business and administration of the courts within the circuit
2. Other

G. Other Administrative Functions

1. Personnel recruitment and hiring, including equal employment opportunity
2. Acquisition of equipment and supplies
3. Budgeting
4. Court security

5. Relations with the bar, media, and community
6. Other

Charles W. Nihan (202) 633-6321
Russell R. Wheeler (202) 633-6311

April 1981

APPENDIX B
Tenure of Chief Circuit Judges Serving Since 1959

Name	Start of Term	End of Term
District of Columbia Circuit		
Prettyman, E. Barrett (24)	October 1958	October 1960
Miller, Wilbur (24)	October 1960	October 1962
Bazelon, David (185)	October 1962	March 1978
Wright, J. Skelly (34)	March 1978	January 1981
McGowan, Carl (4)	January 1981	May 1981
Robinson, Spottswood (62)	May 1981	July 1986
First Circuit		
Woodbury, Peter (66)	June 1959	December 1964
Aldrich, Bailey (91)	January 1965	August 1972
Coffin, Frank (203)	August 1972	July 1989
Second Circuit		
Lumbard, J. Edward (137)	December 1959	May 1971
Friendly, Henry (24)	May 1971	May 1973
Kaufman, Irving (85)	May 1973	June 1980
Feinberg, Wilfred (120)	June 1980	June 1990
Third Circuit		
Kalodner, Harry (5)	October 1965	March 1966
Staley, Austin (21)	March 1966	December 1967
Hastie, William (40)	January 1968	May 1971
Seitz, Collins (157)	May 1971	June 1984
Fourth Circuit		
Sobeloff, Simon (81)	March 1958	December 1964
Haynsworth, Clement (196)	December 1964	April 1981
Winter, Harrison (120)	April 1981	April 1991
Fifth Circuit		
Rives, Richard (16)	August 1959	December 1960
Tuttle, Elbert (79)	December 1960	July 1967
Brown, John (149)	July 1967	December 1979
Coleman, James (14)	December 1979	February 1981
Godbold, John*	February 1981	September 1981
Clark, Charles (167)	October 1981	September 1995
Sixth Circuit		
Allen, Florence (5)	September 1958	February 1959
Martin, John (6)	February 1959	August 1959
McAllister, Thomas (18)	August 1959	February 1961
Miller, Shackelford (19)	February 1961	September 1962
Cecil, Lester (14)	September 1962	November 1963

Name	Start of Term	End of Term
Sixth Circuit *(continued)*		
Weick, Paul (69)	November 1963	August 1969
Phillips, Harry (113)	August 1969	January 1979
Edwards, George 67)	January 1979	August 1984
Seventh Circuit		
Hastings, John S. (106)	August 1959	June 1968
Castle, Latham (20)	June 1968	February 1970
Swygert, Luther (60)	February 1970	February 1975
Fairchild, Thomas (77)	February 1975	July 1981
Cummings, Walter (62)	July 1981	September 1986
Eighth Circuit		
Johnsen, Harvey (71)	August 1959	July 1965
Vogel, Charles (31)	July 1965	February 1968
Van Osterhout, Martin (28)	February 1968	June 1970
Matthes, Marion (36)	July 1970	July 1973
Mehaffy, Pat (13)	July 1973	August 1974
Gibson, Floyd (64)	August 1974	December 1979
Lay, Donald (200)	December 1979	August 1996
Ninth Circuit		
Pope, Walter (6)	February 1959	August 1959
Chambers, Richard (202)	August 1959	June 1976
Browning, James (148)	June 1976	October 1988
Tenth Circuit		
Murrah, Alfred (129)	August 1959	May 1970
Lewis, David (91)	May 1970	December 1977
Seth, Oliver (89)	December 1977	May 1985
Eleventh Circuit		
Godbold, John (109)**	October 1981	March 1990

NOTE: Numbers in parentheses indicate months in the position of chief judge. For current chief judges, the figures are projections that assume service until age seventy. Although the Federal Courts Improvement Act of 1982 limits the tenure of chief judges to seven years, these provisions do not apply to chief judges in office when the act takes effect. See Pub. L. No. 97-164, § 203.

*Chief Judge Godbold served for eight months as chief judge of the old Fifth Circuit, assuming office as chief judge of the Eleventh Circuit in October 1981.

**The projected figure of 109 months is calculated from February 1981, the month Chief Judge Godbold assumed office in the old Fifth Circuit.

U.S. GOVERNMENT PRINTING OFFICE: 1982 O - 378-752 QL 3

THE FEDERAL JUDICIAL CENTER

The Federal Judicial Center is the research, development, and training arm of the federal judicial system. It was established by Congress in 1967 (28 U.S.C. §§ 620-629), on the recommendation of the Judicial Conference of the United States.

By statute, the Chief Justice of the United States is chairman of the Center's Board, which also includes the Director of the Administrative Office of the United States Courts and six judges elected by the Judicial Conference.

The Center's **Continuing Education and Training Division** conducts seminars, workshops, and short courses for all third-branch personnel. These programs range from orientation seminars for judges to on-site management training for supporting personnel.

The **Research Division** undertakes empirical and exploratory research on federal judicial processes, court management, and sentencing and its consequences, usually at the request of the Judicial Conference and its committees, the courts themselves, or other groups in the federal court system.

The **Innovations and Systems Development Division** designs and helps the courts implement new technologies, generally under the mantle of Courtran II—a multipurpose, computerized court and case management system developed by the division.

The **Inter-Judicial Affairs and Information Services Division** maintains liaison with state and foreign judges and judicial organizations. The Center's library, which specializes in judicial administration, is located within this division.

The Center's main facility is the historic Dolley Madison House, located on Lafayette Square in Washington, D.C.

Copies of Center publications can be obtained from the Center's Information Services office, 1520 H Street, N.W., Washington, D.C. 20005; the telephone number is 202/633-6365.

55-43

Federal Judicial Center
Dolley Madison House
1520 H Street, N.W.
Washington, D.C. 20005
202/633-6011